CALIFORNIA COASTAL COMMISSION
45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200

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STAFF REPORT AND RECOMMENDATION

ON CONSISTENCY CERTIFICATION

Consistency Certification No.	CC-028-02
Staff:	MPD-SF
File Date:	4/18/2002
3 Months:	7/18/2002
6 Months:	10/18/2002
Commission Meeting:	9/9/2002

APPLICANT: **City of San Diego**

PROJECT LOCATION: Point Loma Wastewater Treatment Plant (WWTP) and Outfall, City of San Diego and offshore waters (Exhibit 1)

PROJECT DESCRIPTION: Resubmittal of Consistency Certification for Reissuance of Secondary Treatment Waiver

FEDERAL AGENCY AND PERMIT: EPA (Environmental Protection Agency) Reissuance, under Section 301(h) of the Clean Water Act, of a modified National Pollutant Discharge and Elimination System (NPDES) Permit for Wastewater Treatment Plant Discharges

SUBSTANTIVE FILE DOCUMENTS: See page 25.

EXECUTIVE SUMMARY

Under the Clean Water Act, wastewater discharges from publicly owned treatment works (POTWs) are required to receive at least secondary treatment. However, Clean Water Act Section 301(h), sometimes referred to as the "ocean waiver" provision of the Clean Water Act,

gives the EPA Administrator (with the concurrence of the Regional Water Quality Control Board (RWQCB)) the authority to grant a waiver from otherwise applicable secondary treatment requirements. Such a waiver would authorize the City to continue to discharge effluent receiving less than full secondary treatment in terms of suspended solids, biochemical oxygen demand, and pH. Secondary treatment waivers are jointly issued by EPA and the RWQCB, and the waivers need to be renewed every five years.

In reviewing past secondary treatment waiver and waiver renewal requests for the Cities of Morro Bay and San Diego, Goleta, and Orange County, the Commission has generally concurred with consistency certifications and found applicable water quality and marine resource policies of the Coastal Act to be met, especially when: (1) adequate monitoring is in place; and (2) when EPA and the appropriate RWQCB have determined that the discharger's effluent complies with the applicable Clean Water Act and Ocean Plan requirements.

On April 8, 2002, the Commission objected to the City of San Diego's consistency certification for the reissuance of its waiver (CC-10-02). This action took place prior to RWQCB action on the waiver, and the Commission noted three areas of concern that it believed needed to be addressed in order for the discharges to be consistent with applicable CCMP standards: (1) reductions in permitted levels of mass emissions; (2) commitments for water reclamation; and (3) additional monitoring provisions.

Two days later, on April 10, 2002, the RWQCB modified its staff-recommended permit conditions and addressed these three areas of Commission concern as follows: The RWQCB: (1) reduced the total permitted mass emission loadings by 6.7%, from 15,000 metric tons per year (MT/yr.) to 13,995 MT/yr. for the first four years (with the fifth year remaining at 13,599 MT/yr.); (2) independent of the NPDES permit, requested annual reports from its staff on the City's progress towards implementing water reclamation (and noted that it could impose future reclamation requirements if adequate progress is not forthcoming); and (3) also independent of the NPDES permit, instructed its staff to review (and prepare for future RWQCB adoption) modifications to the monitoring program, including specific provisions for deep ocean receiving stations, human pathogens, and long term trends.

In separate proceedings the City appealed both the Commission and RWQCB actions. The City also resubmitted its consistency certification to the Commission (CC-28-02). On May 8, 2002, the City appealed the Coastal Commission's consistency certification objection (CC-10-02) to the Secretary of Commerce. On May 9, 2002, the City appealed the RWQCB's NPDES permit action modifying the mass emission limits to the State Water Resources Control Board (SWRCB). The City and the Commission staff agreed to "stay" any further deliberations in the Commission/Secretary of Commerce appeal, pending Commission reconsideration of the matter once the SWRCB acted. On August 15, 2002, the SWRCB ordered the mass emission limits to be returned to the originally-drafted 15,000 MT/yr. (for the first four years). Accordingly, the City has clarified that its resubmitted consistency certification is for the waiver as modified and ordered by the SWRCB.

EPA's independent Technical Evaluation determined that San Diego's discharges meet the applicable Clean Water Act standards for a waiver. The RWQCB's analysis further documents that the discharges would meet California Ocean Plan standards. Monitoring results for the past 5 years support San Diego's claim that the discharges comply with secondary treatment waiver requirements and would not adversely affect marine resources. The stringent monitoring as required under Section 301(h) will be continued. The City has upgraded its facilities since the waiver was originally granted, including adding wastewater reclamation facilities and reducing total mass emission levels. The SWRCB noted:

> *When the first Section 301(h) waiver was issued in 1995, the Regional Board set a discharge limit of 15,000 metric tons per year of TSS in its waste discharge requirements. At the time, the Plant was discharging a little less than 11,000 tons per year. Since then, the Plant has succeeded in reducing the amount of TSS discharged almost every year, despite considerable growth in its service area. In 1996, the discharge of TSS was 10,622 metric tons per year; in 1997, it was 10,183; in 1998, the number was 10,469; in 1999, the discharge was down to 9,188; and in 2000, the Plant only discharged 8,888 metric tons of TSS. That represents a 16 percent reduction over five years.*

The SWRCB also noted that by the end of the 5 year permit, even if discharges increase from the current levels of 175 million gallons/day (MGD) to the projected 195 MGD: "… continued operation at the current rate of efficiency ought to result in a discharge of slightly more than 11,000 tons in that year." Therefore, in ordering the NPDES permit to be returned to the original 15,000 MT/yr. limit, the SWRCB concluded that the RWQCB had "… failed to make findings, either in its order or during its deliberations, that justify reducing the mass emission limits for TSS from 15,000 metric tons per year to 13,995 metric tons per year in the waste discharge requirements."

Given the SWRCB analysis on the mass emission levels and the RWQCB measures to address water reclamation and future monitoring improvements, as well as the available monitoring evidence of the lack of adverse effects of past discharges on the marine environment and the continuation of the stringent monitoring throughout the term of the permit, the City's discharges would be consistent with the water quality, marine resources, commercial and recreational fishing, and public access and recreation policies (Sections 30230, 30231, 30234, 30234.5, 30213, and 30220) of the Coastal Act.

STAFF SUMMARY AND RECOMMENDATION:

I. Project Description. The City of San Diego has requested a waiver under Section 301(h) of the Clean Water Act (the Act), 33 U.S.C. Section 1311(h), from the secondary treatment requirements contained in Section 301(b)(1)(B) of the Act, 33 U.S.C. Section 1311(b)(1)(B). The waiver is being sought for the Point Loma Wastewater Treatment Plant (WWTP) and Outfall, which discharges 4.5 miles from Point Loma. The waiver would allow the discharge of wastewater receiving less-than-secondary treatment into the Pacific Ocean. The applicant has been operating under a waiver under a "special exception" to the 301(h) program, granted when Congress amended the Clean Water Act by adding to it Section 301(j)(5). That section allowed San Diego to apply for a waiver after the deadline for such applications had passed (it also contained substantive requirements, which are discussed below). On December 12, 1995, EPA and the RWQCB granted the initial waiver (NPDES Permit No. CA0107409). In April 2001 the City applied to EPA for a renewal of the waiver.

The Point Loma WWTP, which serves the Metropolitan San Diego area, is located near the southern tip of Point Loma, and discharges wastewater from the City of San Diego through the Point Loma ocean outfall at a distance 4.5 miles from shore, west of Point Loma, in approximately 100 meters of water. Existing wastewater flows in recent years (1999 and 2000) have been around 175 million gallons per day (MGD) (average flows). Projected flows for the year 2006 (the end of the 5-year permit) are estimated at 195 MGD. System capacity are 240 MGD (average) and 432 MGD (peak wet weather flow). (The project service area and facilities are further described in Exhibit 4.)

The City has made a number of upgrades to the treatment system since the previous waiver was granted in 1995, including: 1) the addition of two new sedimentation basins at the Point Loma plant; 2) construction of the Metro Biosolids Center (MBC) a regional solids handling facility; 3) construction of the North City Wastewater Reclamation Plant (NCWRP); and 4) construction of the South Bay Water Reclamation Plant (SBWRP).

Secondary treatment is defined in Clean Water Act implementing regulations (40 CFR Part 133) in terms of effluent quality for suspended solids (SS), biochemical oxygen demand (BOD) and pH. The secondary treatment requirements for SS, BOD and pH are as follows:

SS: (1) The 30-day average shall not exceed 30 mg/l (milligrams per liter). (2) The 7-day average shall not exceed 45 mg/l. (3) The 30-day average percent removal shall not be less than 85%;

BOD: (1) The 30-day average shall not exceed 30 mg/l. (2) The 7-day average shall not exceed 45 mg/l. (3) The 30-day average percent removal shall not be less than 85%;

pH: The effluent limits for pH shall be maintained within the limits of 6.0 to 9.0 pH units.

State water quality standards (i.e., the California Ocean Plan) require removal of 75% of suspended solids. The Ocean Plan does not have an effluent limitation for BOD; the comparable standard is for dissolved oxygen, and the Plan requires that "dissolved oxygen shall not at any time be depressed more than 10% from that which occurs naturally as a result of the discharge of oxygen-demanding waste materials."

The special legislation created for the City's application for a secondary treatment waiver (Ocean Pollution Reduction Act of 1994 (OPRA)/CWA Section 301(j)(5)/Public Law 103-431) requires:

1. 80% removal of TSS (monthly ave.);

2. 58% removal of BOD (annual ave.);

3. 45 MGD of water reclamation capacity by the year 2010; and

4. Reduction of TSS during the 5-year period of permit modification (EPA has interpreted this standard to require reduction of TSS from 15,000 to 13,600 metric tons/yr).

The following table compares the various statutory requirements:

Table 1. Comparison of treatment removal requirements. [Source: EPA Tentative Decision Document]

Requirement	Suspended Solids Removal	Biochemical Oxygen Demand Removal	pH Limitation
Primary	30% as 30-day average	30% as 30-day average	6-9
California Ocean Plan	75% as 30-day average	No Requirement	6-9
OPRA [only applicable to San Diego discharges]	80% as 30-day average	58% as annual average	
Secondary	85% as 30-day average	85% as 30-day average	6-9

The City's advanced primary system currently removes 80% of suspended solids. The City currently removes approximately 58% of BOD. The City is in the process of implementing reclamation: the NCWRP is now on line and handles 30 MGD, and the SBWRP also recently went on line, adding another 15 MGD of reclamation (Exhibit 2). Thus, the City anticipates achieving the "OPRA" requirement of 45 MGD of water reclamation up to eight years ahead of schedule.

The City is requesting a variance from secondary treatment standards for BOD and SS. The City is not requesting a waiver of pH requirements. The City's proposed effluent limits would require the removal of 80% of SS as a monthly average and the removal of 58% of BOD as an annual average. In addition, the upper limits suspended solids loadings to the ocean would be

reduced to no more than 13,600 metric tons/year by the end of the 5-year permit period. Current suspended solids loadings are less than 10,000 metric tons/yr.

The City has applied to the EPA and the RWQCB for reissuance of the 301(h) waiver. These waivers are independently reviewed but jointly issued by EPA and the RWQCB. EPA's independent Technical Analysis is attached as Exhibit 4. Once EPA performs its technical review it issues a Tentative Decision to grant the 301(h) waiver of secondary requirements, which is then followed by RWQCB hearing (including public comments), and a final EPA decision (including responses to comments). On April 10, 2002, the RWQCB took action on Order No. R9-2002-0025 and modified the allowable mass emission levels. The City appealed this decision to the SWRCB, which ordered the permit modified to reflect what had originally been recommended by the RWQCB staff (before the RWQCB's April 10, 2002, reductions). Therefore, the City's resubmittal to the Commission describes the project as originally submitted as CC-10-02.

II. History. On September 27, 1995, after a Commission public hearing, the Commission staff concurred with a previous submittal from the City of San Diego of a "No effects" letter (in lieu of a consistency certification) for its first EPA-issued secondary treatment waiver (NE-94-95). That matter was reviewed as an administrative item due to unusual circumstances and history surrounding the waiver. The Commission normally reviews secondary treatment waivers and reissuances as consistency certifications, as is the case for the subject reissuance.

On April 8, 2002, the Commission objected to the City's consistency certification for the waiver reissuance (CC-10-02). The Commission determined that the activity was not consistent with the California Coastal Management Program (CCMP), and that in order to bring the activity into conformance with the CCMP, the City would need to modify the activity. The Commission noted three areas of concern that needed to be addressed in order for the discharges that would occur under the proposed waiver to be consistent with applicable CCMP standards: (1) reductions in permitted levels of mass emissions; (2) commitments for water reclamation; and (3) additional monitoring provisions. More specifically, the Commission requested:

1. meaningful reductions in rates of annual mass emissions (i.e., the proposed EPA/RWQCB permit limitations of 15,000 metric tons (MT) per year for the first four years, and 13,599 MT for the fifth year, are set unrealistically high, compared to current discharges of approximately 9,000 MT/yr.);

2. commitments for actual reclamation (as opposed to the requirements under the Ocean Pollution Reduction Act of 1994 (OPRA) to develop 45 MGD of reclamation *capacity*); and

3. additional monitoring measures, consisting of:

a. Extending the Coastal Ocean Dynamics Applications Radar (CODAR) monitoring developed at Imperial Beach to the Point Loma area.

b. Adding a monitoring station in La Jolla Canyon.

c. Incorporating remote sensing into the monitoring program.

On April 10, 2002, the Regional Water Quality Control Board (RWQCB), San Diego Region, adopted modified permit conditions and addressed these three areas of Commission concern in the following manner:

(1) the RWQCB modified the permit to reduce total allowable mass emission loadings by 6.7%, from 15,000 metric tons per year (MT/yr.) to 13,995 MT/yr. for the first four years (with the fifth year remaining at 13,599 MT/yr.);

(2) the RWQCB requested annual reports from the RWQCB's Executive Officer on the City's progress towards implementing water reclamation, and noted that the RWQCB could impose future reclamation requirements if adequate progress is not forthcoming;

(3) the RWQCB instructed its staff to review and prepare for future RWQCB adoption modifications to the monitoring program, including specific provisions for deep ocean receiving stations, human pathogens, and long term trends.

In separate proceedings the City appealed both the Commission and RWQCB actions. The City also resubmitted its consistency certification to the Commission (CC-28-02). On May 8, 2002, the City appealed the Coastal Commission's consistency certification objection (CC-10-02) to the Secretary of Commerce. On May 9, 2002, the City appealed the RWQCB's NPDES permit action modifying the mass emission limits to the State Water Resources Control Board (SWRCB)[1]. The City and the Commission staff agreed to "stay" any further deliberations in the Commission/Secretary of Commerce appeal, pending Commission reconsideration of the matter once the SWRCB acted. On August 15, 2002, the SWRCB ordered the mass emission limits to be returned to the originally-drafted 15,000 MT/yr. (for the first four years). The SWRCB concluded that the RWQCB had "… failed to make findings, either in its order or during its deliberations, that justify reducing the mass emission limits for TSS from 15,000 metric tons per year to 13,995 metric tons per year in the waste discharge requirements" (Exhibit 13). Accordingly, the City has clarified that its resubmitted consistency certification is for the waiver as modified and ordered by the SWRCB.

[1] Only the first of the above RWQCB measures was an actual permit modification (i.e., the second and third measures were outside the scope of the permit).

III. Previous Commission Reviews of Other California Waivers. In 1979, and 1983-1985, the Commission reviewed a number of secondary treatment waiver applications under the federal consistency provisions of the Coastal Zone Management Act, and EPA ultimately granted many of these waivers. During these reviews the Commission expressed concern over the need for treatment meeting the *equivalent* of secondary treatment with respect to removal of toxics. Nevertheless, at that time, the Commission consciously adopted a neutral position on the waivers. Since a position of "neutrality" is not an action that is recognized under CZMA regulations, the Commission's concurrence in the waivers was presumed pursuant to 15 CFR Section 630.63(a).

Section 301(h) waivers are only valid for 5 years, and three of the waivers initially granted subsequently came up for renewal: Morro Bay, Goleta, and Orange County (CSDOC). On January 13, 1999, and January 12, 1993, the Commission concurred with the City of Morro Bay's waiver renewals (CC-123-98 and CC-88-92). On January 8, 1997, and March 10, 1998, respectively, the Commission concurred with Goleta's and Orange County's Section 301(h) waiver renewals (CC-126-96 and CC-3-98). On February 7, 2002, Goleta submitted a consistency certification for its current waiver renewal request, which was initially scheduled for action at the Commission's May 2002 meeting. That hearing was postponed, and the matter is still pending before the Commission (CC-13-02) (see next paragraph for further details).

IV. Other Recent Waiver Events. On July 12, 2002, the Central Coast RWQCB denied the Goleta Sanitary District's current waiver renewal request. On August 12, 2002, Goleta appealed this decision to the SWRCB. On July 17, the Orange County Sanitation District (OCSD) Board of Directors voted to pursue secondary treatment for Orange County, although it acknowledged that upgrading to secondary may take more than a decade. The Board instructed OCSD staff to immediately begin negotiations with EPA on consent decree terms to implement secondary treatment.

V. Status of Local Coastal Program. The standard of review for federal consistency certifications is the policies of Chapter 3 of the Coastal Act, and not the Local Coastal Program (LCP) of the affected area. If an LCP that the Commission has certified and incorporated into the California Coastal Management Program (CCMP) provides development standards that are applicable to the project site, the LCP can provide guidance in applying Chapter 3 policies in light of local circumstances. If the Commission has not incorporated the LCP into the CCMP, it cannot guide the Commission's decision, but it can provide background information. The City of San Diego's LCP has been certified by the Commission and incorporated into the CCMP.

VI. Applicant's Consistency Certification. The City of San Diego certifies the proposed activity complies with the federally approved California Coastal Management Program and will be conducted in a manner consistent with such program.

VII. Staff Recommendation:

The staff recommends that the Commission adopt the following motion:

MOTION. I move that the Commission **concur** with the City of San Diego's consistency certification.

The staff recommends a **YES** vote on this motion. A majority vote in the affirmative will result in adoption of the following resolution:

Concurrence

The Commission hereby **concurs** with the consistency certification made by the City of San Diego for the proposed project, finding that the project is consistent with the California Coastal Management Program.

VIII. Findings and Declarations:

The Commission finds and declares as follows:

A. Water Quality/Marine Resources

1. Regulatory Framework. The Environmental Protection agency (EPA) and the applicable RWQCBs (Regional Water Quality Control Boards) regulate municipal wastewater outfalls discharging into the Pacific Ocean under NPDES permits issued pursuant to the federal Clean Water Act. As enacted in 1972, the Clean Water Act required secondary treatment for all wastewater treatment nationwide. Amendments to the Clean Water Act in 1977 provided for Section 301(h) (33 USC Section 1311(h)) waivers of the otherwise applicable requirements for secondary treatment for discharges from publicly owned treatment works into marine waters.

Section 301(h) of the Clean Water Act provides that an NPDES permit which modifies the secondary treatment requirements may be issued if the applicant: (1) discharges into oceanic or saline, well-mixed estuarine waters; and (2) demonstrates to EPA's satisfaction that the modifications will meet those requirements specified in Section 301(h) (see pp. 7-9), including: (a) that the waiver will not result in any increase in the discharge of toxic pollutants or otherwise impair the integrity of receiving waters; and (b) that the discharger must implement a monitoring program for effluent quality, must assure compliance with pre-treatment requirements for toxic control, must assure compliance with water quality standards, and must measure impacts to indigenous marine biota. In California, the applicable water quality standards are embodied in the California Ocean Plan (see pp. 13-14 and Exhibit 5).

While the State of California (through the SWRCB and RWQCBs) administers the NPDES permit program and issues permits for discharges to waters within State waters, authority to grant a waiver and issue a modified NPDES permit under Section 301(h) of the Act is reserved to the Regional Administrator of EPA. Prior state concurrence with the waiver is also required.

Section 307(f) of the federal CZMA specifically incorporates into the California Coastal Management Program (CCMP) the Clean Water Act and all water quality requirement adopted pursuant to it by either the federal or state government). Commission consistency certification review is required for 301(h) applicants, because EPA NPDES permits are listed in California's program as federal licenses or permits for activities affecting land or water uses in the coastal zone. In reviewing the discharges, the Commission relies on the Clean Water Act and its implementing regulations, the California Ocean Plan, the Coastal Act (Chapter 3 policies), and Water Code Section 13142.5 (incorporated into the CCMP by Section 30412(a) thereof). These requirements, which are further described and summarized below, provide both specific numerical standards for pollutants, as well as general standards for protection of marine biological productivity.

a. <u>Clean Water Act/Section 301(h).</u> Implementation of the Clean Water Act in California, for the most part, has been delegated to the applicable RWQCB for issuance of NPDES permits. Under an MOA between EPA and the State of California, NPDES permits for outfalls beyond 3 miles *and* for secondary treatment waivers (regardless of location) are issued jointly by EPA and the applicable RWQCB. The Clean Water Act divides pollutants into three categories for purposes of regulation, as follows: (1) conventional pollutants, consisting of total suspended solids (TSS or SS); biochemical oxygen demand (BOD, a measure of the amount of oxygen consumed during degradation of waste); pH; fecal coliform bacteria; and oil and grease; (2) toxic pollutants, including heavy metals and organic chemicals; and (3) non-conventional pollutants (a "catch-all" category for other substances needing regulation (e.g., nitrogen and phosphorus, chlorine, fluoride)).

Guidelines adopted under Section 403 of the Clean Water Act (40 CFR Part 125.120-124, Subpart M, “Ocean Discharge Criteria”) specify that beyond an initial mixing zone, commonly referred to as the zone of initial dilution (ZID), the applicable water quality standards must be met. The zone of initial dilution is the boundary of the area where the discharge plume achieves neutral buoyancy and first begins to spread horizontally. Discharged sewage is mostly freshwater, so it creates a buoyant plume that moves upward toward the sea surface, entraining ambient seawater in the process. The wastewater/seawater plume rises through the water column until its density is equivalent to that of the surrounding water, at which point it spreads out horizontally.

Section 301(h) of the Clean Water provides for secondary treatment waivers under certain circumstances. The following requirements must be met for EPA to grant a secondary treatment waiver:

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) such modified requirements will not interfere, alone or in combination with pollutants from other sources, with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population (BIP) of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable, and the scope of the monitoring is limited to include only those scientific investigations which are necessary to study the effects of the proposed discharge;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) in the case of any treatment works serving a population of 50,000 or more, with respect to any toxic pollutant introduced into such works by an industrial discharger for which pollutant there is no applicable pretreatment requirement in effect, sources introducing waste into such works are in compliance with all applicable pretreatment requirements, the applicant will enforce such requirements, and the applicant has in effect a pretreatment program which, in combination with the treatment of discharges from such works, removes the same amount of such pollutant as would be removed if such works were to apply secondary treatment to discharges and if such works had no pretreatment program with respect to such pollutant;

(7) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(8) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(9) the applicant at the time such modification becomes effective will be discharging effluent which has received at least primary or equivalent treatment and which meets the criteria established under section 304(a)(1) of the Clean

> *Water Act after initial mixing in the waters surrounding or adjacent to the point at which such effluent is discharged.*
>
> *For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act. For the purposes of paragraph (9), "primary or equivalent treatment" means treatment by screening, sedimentation and skimming adequate to remove at least 30 percent of the biochemical oxygen demanding material and of the suspended solids in the treatment works influent, and disinfection, where appropriate. A municipality which applies secondary treatment shall be eligible to receive a permit pursuant to this subsection which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant from any treatment works owned by such municipality into marine waters. No permit issued under this subsection shall authorize the discharge of sewage sludge into marine waters. In order for a permit to be issued under this subsection for the discharge of a pollutant into marine waters, such marine waters must exhibit characteristics assuring that water providing dilution does not contain significant amounts of previously discharged effluent from such treatment works. No permit issued under this subsection shall authorize the discharge of any pollutant into marine estuarine waters which at the time of application do not support a balanced, indigenous population of shellfish, fish and wildlife, or allow recreation in and on the waters or which exhibit ambient water quality below applicable water quality standards adopted for the protection of public water supplies, shellfish and wildlife, or recreational activities or such other standards necessary to assure support and protection of such uses. The prohibition contained in the preceding sentence shall apply without regard to the presence or absence of a causal relationship between such characteristics and the applicant's current or proposed discharge. Notwithstanding any of the other provisions of this subsection, no permit may be issued under this subsection for discharge of a pollutant into the New York Bight Apex consisting of the ocean waters of the Atlantic Ocean westward of 73 degrees 30 minutes west longitude and westward of 40 degrees 10 minutes north latitude.*

In addition, as discussed on page 3, Section 301(j)(5) of the Clean Water Act provides procedural and substantive requirements enabling the City to apply for a waiver and specifying that discharges must meet the following tests: 80% removal of TSS (monthly ave.); 58% removal of BOD (annual ave.); 45 MGD of water reclamation capacity by the year 2010; and reduction of TSS during the 5-year period of permit modification.

b. <u>California Ocean Plan</u>. The California Ocean Plan was originally adopted by the SWRCB and approved by the EPA in June 1972, and is revised every three years. Among the California Ocean Plan requirements are the following water quality objectives (Chapter II):

> *A. Bacterial Characteristics, for body-contact recreation and shellfish harvesting;*
>
> *B. Physical Characteristics, including floatables, visible oil and grease, discoloration of the surface, the reduction of light penetration, and the rate of deposition of solid and inert materials on the bottom;*
>
> *C. Chemical Characteristics, including dissolved oxygen, pH, dissolved sulfide in and near sediments, concentration of substances in the sediments, organic materials in the sediments, and nutrient levels, and including maintenance of standards such as protecting indigenous biota and marine life;*
>
> *D. Biological Characteristics, including:*
>
> *1. Marine communities, including vertebrate, invertebrate, and plant species, shall not be degraded.*
>
> *2. The natural taste, odor, and color of fish, shellfish, or other marine resources used for human consumption shall not be altered.*
>
> *3. The concentrations of organic materials in fish, shellfish or other marine resources used for human consumption shall not bioaccumulate to levels that are harmful to human health.*
>
> *E. Radioactivity, including maintenance of a standard that marine life shall not be degraded.*

General requirements in the Ocean Plan include:

> *A. Waste management systems that discharge to the ocean must be designed and operated in a manner that will maintain the indigenous marine life and a healthy and diverse marine community.*
>
> *B. Waste discharged to the ocean must be essentially free of:*
>
> *1. Material that is floatable or will become floatable upon discharge.*

2. Settleable material or substances that may form sediments which will degrade benthic communities or other aquatic life.

3. Substances which will accumulate to toxic levels in marine waters, sediments or biota.

4. Substances that significantly decrease the natural light to benthic communities and other marine life.

5. Materials that result in aesthetically undesirable discoloration of the ocean surface.

C. Waste effluents shall be discharged in a manner which provides sufficient initial dilution to minimize the concentrations of substances not removed in the treatment.

D. Location of waste discharges must be determined after a detailed assessment of the oceanographic characteristics and current patterns to assure that: ...

1. Pathogenic organisms and viruses are not present in areas where shellfish are harvested for human consumption or in areas used for swimming or other body-contact sports.

2. Natural water quality conditions are not altered in areas designated as being of special biological significance.

3. Maximum protection is provided to the marine environment.

In addition, the Ocean Plan contains "Table A" effluent limitations for major wastewater constituents and properties, "Table B" limitations that provide maximum concentrations for toxic materials that may not be exceeded upon completion of initial dilution, and other standards. Table A and B limitations are contained in Exhibit 5.

(c) <u>Coastal Act Policies</u>. The Coastal Act contains policies protecting water quality and marine resources. Section 30230 of the Coastal Act provides:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 provides:

> *The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

In addition to these resource protection policies, Section 30412 addresses the Commission's relationship with the SWRCB (State Water Resources Control Board and RWQCB); Section 30412 provides:

> *(a) In addition to the provisions set forth in Section l3l42.5 of the Water Code, the provisions of this section shall apply to the commission and the State Water Resources Control Board and the California regional water quality control boards.*
>
> *(b) The State Water Resources Control Board and the California regional water quality control boards are the state agencies with primary responsibility for the coordination and control of water quality. The State Water Resources Control Board has primary responsibility for the administration of water rights pursuant to applicable law. The commission shall assure that proposed development and local coastal programs shall not frustrate the provisions of this section. Neither the commission nor any regional commission shall, except as provided in subdivision (c), modify, adopt conditions, or take any action in conflict with any determination by the State Water Resources Control Board or any California regional water quality control board in matters relating to water quality or the administration of water rights.*
>
> *Except as provided in this section, nothing herein shall be interpreted in any way either as prohibiting or limiting the commission, regional commission, local government, or port governing body from exercising the regulatory controls over development pursuant to this division in a manner necessary to carry out the provisions of this division.*

Finally, Section l3l42.5 of the Water Code, which is referenced in Section 30412 above, provides:

> *In addition to any other policies established pursuant to this division, the policies of the state with respect to water quality as it relates to the coastal marine environment are that:*

(a) Waste water discharges shall be treated to protect present and future beneficial uses, and, where feasible, to restore past beneficial uses of the receiving waters. Highest priority shall be given to improving or eliminating discharges that adversely affect any of the following:

(1) Wetlands, estuaries, and other biologically sensitive sites.
(2) Areas important for water contact sports.
(3) Areas that produce shellfish for human consumption.
(4) Ocean areas subject to massive waste discharge.

Ocean chemistry and mixing processes, marine life conditions, other present or proposed outfalls in the vicinity, and relevant aspects of areawide waste treatment management plans and programs, but not of convenience to the discharger, shall for the purposes of this section, be considered in determining the effects of such discharges...

2. EPA Evaluation of the City of San Diego's Discharges. EPA has conducted a technical evaluation analyzing San Diego's compliance with the 301(h) and other criteria discussed above. This tentative evaluation, dated, February 8, 2002 (Exhibit 4), includes the following EPA findings:

SUMMARY OF FINDINGS

Based upon review of the data, references, and empirical evidence furnished in the application and other relevant sources, EPA Region 9 makes the following findings with regard to compliance with the statutory and regulatory criteria:

1. The applicant's proposed discharge complies with the California Ocean Plan water quality standards for dissolved oxygen (DO), suspended solids, and pH. [Section 301(h)(1), 40 CFR 125.61]

2. The applicant's proposed discharge will not adversely impact public water supplies or interfere with the protection and propagation of a balanced, indigenous population (BIP) of fish, shellfish, and wildlife and will allow for recreational activities. [Section 301(h)(2), 40 CFR 125.62]

3. The applicant has a well-established water quality monitoring program and is committing the resources to continue the program. The City has been monitoring the area around the Point Loma discharge since 1991. EPA Region 9 and the San Diego Regional Water Quality Control Board (Regional Board) will review the existing monitoring program and modify as appropriate. These modifications will be included as provisions for monitoring the impact of the dis-

charge in the 301(h) modified NPDES permit. [Section 301(h)(3), 40 CFR 125.63]

4. The applicant's proposed discharge will not result in any additional treatment requirements on any other point or nonpoint source (See letter from Regional Board dated January 24, 2002). [Section 301(h)(4), 40 CFR 125.64]

5. The applicant's existing pretreatment program was approved by EPA on June 29, 1982. [Section 301(h)(5), 40 CFR 125.66 and 125.68]

6. The applicant has complied with the urban area pretreatment requirements by demonstrating that it has an applicable pretreatment requirement in effect for each toxic pollutant introduced by an industrial discharger. The Urban Area Pretreatment Program was submitted to EPA and the Regional Board in August of 1996. This program was approved by the Regional Board on August 13, 1997 and by EPA Region 9 on December 1, 1998. [Section 301(h)(6), 40 CFR 125.65]

7. The City will continue their existing nonindustrial program which has been in effect since 1985. The City will also continue their existing comprehensive public education program to minimize the amount of toxic pollutants that enter the treatment system from nonindustrial sources. [Section 301(h)(7), 40 CFR 125.66]

8. There will be no new or substantially increased discharges from the point source of the pollutants to which the 301(h) variance will apply above those specified in the permit. [Section 301(h)(8), 40 CFR 125.67]

9. The applicant's removal of 80% of SS as a monthly average and 58% of BOD as an annual average is sufficient to demonstrate the federal requirement of at least 30% removal capability and the California Ocean Plan's 75% SS removal requirement. The discharge allows sufficient dilution to attain of State water quality standards and Federal water quality criteria. [Section 301(h)(9), 40 CFR 125.60]

10. The California Coastal Commission issued Consistency Certification for extending the Point Loma outfall on November 12, 1991. The City has requested a determination from the California Coastal Commission that the proposed discharge is consistent with the policies of the California Coastal Zone Management Program **…** *No permit may be issued that is not consistent with the policies of the California Coastal Management Program. The California Coastal Commission will be hearing this issue at their meeting on March 5-8, 2002. [40 CFR 125.59(b)(3)]*

11. On June 28, 2999, the applicant sent letters to the US Fish and Wildlife Service and the National Marine Fisheries Service requesting concurrence with their conclusion that the discharge will have no impact to threatened or endangered species. The National Marine Fisheries Service concluded that there were no Federally listed species under its jurisdiction that would be affected by the discharge (letter dated August 10, 1999). No response has been received from the U.S. Fish and Wildlife Service. The permit is contingent on a finding from the U.S. Fish and Wildlife Service. There are no designated marine sanctuaries located within the coastal zones of California that could be impacted by the modified discharge. [40 CFR 125.59(b)(3)]

12. In its operation of the Pt. Loma WWTP, the applicant will remove 80% of suspended solids from the effluent on an annual basis, remove 58% removal of biological oxygen demand from the effluent on an annual basis, and reduce the mass of solids during the period of modification to 13,599 metric tons per year. In addition, the applicant has constructed two reclamation facilities with a treatment capacity of 45 MGD.

13. The applicant sent a letter to the Regional Board requesting a determination that the proposed discharge would comply with the applicable water quality standards on April 4, 2000. The Regional Board confirmed that the City of San Diego's facilities on Point Loma are capable of meeting effluent limitations contained in the California Ocean Plan (see letter dated January 24, 2002). As specified in a Memorandum of Understanding (May 1986) between EPA Region IX and the California State Water Resources Control Board, the joint issuance of an NPDES permit which incorporates both the 301(h) decision and State waste discharge requirements will serve as the State's concurrence. A draft NPDES permit for the discharge has been developed jointly with the Regional Board. [40 CFR 125.59 (i)(2)]

3. <u>RWQCB/SWRCB Decisions</u>. As noted previously, on April 10, 2002, the RWQCB modified its staff-recommended permit conditions and addressed the three areas that the Commission identified as concerns in its review of CC-10-02 (see pp. 6-7), as follows:

(1) The RWQCB modified the permit by reducing total allowable mass emission loadings by 6.7%, from 15,000 metric tons per year (MT/yr.) to 13,995 MT/yr. for the first four years (with the fifth year remaining at 13,599 MT/yr.);

(2) Independent of the NPDES permit, the RWQCB requested annual reports from its staff on the City's progress towards implementing water reclamation (and noted that it could impose future reclamation requirements if adequate progress is not forthcoming); and

(3) Also independent of the NPDES permit, the RWQCB instructed its staff to review (and prepare for future RWQCB adoption) modifications to the monitoring program, including specific provisions for deep ocean receiving stations, human pathogens, and long term trends.

On May 9, 2002, the City appealed the RWQCB's NPDES permit action modifying the mass emission limits to the SWRCB (the second and third measures above were not part of the permit and not appealed). On August 15, 2002, the SWRCB ordered the mass emission limits to be returned to the originally-drafted 15,000 MT/yr. (for the first four years). The SWRCB concluded that the RWQCB had failed to justify reducing the mass emission limits. The SWRCB found (Exhibit 13):

> *II. CONTENTION AND FINDING*[2]
>
> *Contention: The decision of the Regional Board to reduce the mass emission limits for TSS from 15,000 to 13,995 metric tons per year for the first four years of the permit is not supported by evidence in the record.*
>
> *Finding: While there is no evidence in the record that the City will, under any reasonable set of circumstances, exceed the limits set by the Regional Board, the record does not contain evidence that the reduction from 15,000 metric tons per year to 13,995 is based on actual water quality considerations.*
>
> *The City has been operating the Plant since the early 1960s and has been subject to regulation by the Regional Board for essentially that entire time. When the first Section 301(h) waiver was issued in 1995, the Regional Board set a discharge limit of 15,000 metric tons per year of TSS in its waste discharge requirements. At the time, the Plant was discharging a little less than 11,000 tons per year. Since then, the Plant has succeeded in reducing the amount of TSS discharged almost every year, despite considerable growth in its service area. In 1996, the discharge of TSS was 10,622 metric tons per year; in 1997, it was 10,183; in 1998, the number was 10,469; in 1999, the discharge was down to 9,188; and in 2000, the Plant only discharged 8,888 metric tons of TSS. That represents a 16 percent reduction over five years. Nevertheless, the City, in its application to renew the Section 301(h) waiver, told both EPA and the Regional Board that its discharge of TSS from the Plant would be 14,100 metric tons in 2001 going up steadily to 14,600 tons in 2005. The waste discharge requirements provide, and the City has not challenged the provision, that the discharge must be no more than 13,599 tons in 2006. No explanation has been provided for why the City's discharge from the Plant would increase 59 percent between 2000 and 2001 nor is there any explanation of what the City will do between 2005 and 2006 to reduce its discharge by 7 percent.*

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[2] *The City raises numerous procedural issues in its petition. Because of the disposition of this matter, it is unnecessary to address any of those issues. People v. Barry (1987) 194 Cal.App.3d 158 (239 Cal.Rptr. 349.)*

The record indicates that the Plant removes more than 85 percent of the TSS in its effluent stream.[3] No testimony or evidence was offered to show that this removal rate could not be assumed for the duration of this permit. At that rate of removal, even if the Plant were to operate at its full design capacity of 240 million gallons per day (MGD), the Regional Board has calculated that the mass emissions discharge would be less than 13,900 metric tons. As the City has projected the actual flow for the Plant in the year 2006 to be only 195 MGD, continued operation at the current rate of efficiency ought to result in a discharge of slightly more than 11,000 tons in that year.[4]

Nevertheless, the Regional Board's decision to reduce the limit for TSS mass emissions by 6.7 percent must be supported by evidence in the record. EPA approved the permit with the 15,000 ton limit.[5] Regional Board staff proposed adoption of the permit with the 15,000 ton limit. No evidence was offered to the Regional Board that a significant water quality impact would occur with a discharge of 15,000 tons per year that would not occur if the discharge were limited to 13,995 tons.

California law requires that an administrative agency "build a bridge" between the decisions it makes and the record that supports the decision. Topanga Association for a Scenic Community v. County of Los Angeles (1974) 11 Cal.3d 506. It is difficult to find such a bridge in this case. The absence of a real-world controversy makes the entire issue seem academic at best. As we pointed out in our discussion above, unless the City fails to comply with its obligation to remove 80 percent or more of the TSS from its effluent, neither the 15,000 ton limit nor the 13,995 ton limit is actually at issue. If it continues to remove TSS at the current 85 percent rate, the Plant will not even approach those limits until it is operating at near design capacity, many years from now. Any concern about the short-term performance of the City in this regard would seem not to be addressed by the reduction and any long-term concerns ought to be resolved by the requirement that the discharge be no greater than 13,599 metric tons per year beginning in 2006. Clearly, the discharge from the Plant in 2006 is more relevant to it's performance ten or fifteen years from now than its discharge in 2001.

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[3] *In its submittal to EPA in support of its Section 301(h) waiver application, the City assumes a mass emission removal rate of "at least 80 percent." Removal of less than 80 percent would be a violation of the permit. The City has not challenged that requirement.*

[4] *The discharge resulting from an 80 percent removal rate would be about 6 percent higher. If the Plant operated at an 80 percent removal rate, the figure for 2006 based on the City's projected discharge would be slightly less than 12,000 tons.*

5 *EPA indicated in its February 11, 2002 response to comments that "the proposed discharge would meet the nine 301(h) requirements and is in full compliance with the CWA [Clean Water Act]." EPA also stated that the discharge of mass emissions at the proposed 15,000 metric ton level was "entirely consistent with the language and purpose of the OPRA [Ocean Pollution Reduction Act of 1994]."*

The Regional Board discussed the reduction at its April 10 meeting. No clear reason was given for reducing the limit from 15,000 to 14,000 metric tons, although most of the Board members indicated on the record that they believed the 15,000 ton figure was not based on any legitimate environmental standards and that the reduction was an important statement of policy for the Regional Board to make. When asked by the Regional Board's counsel to articulate the findings in support of the reduction, the Chair responded:

> *"I think the record supports a ratcheting down of the limit, and that this is our effort to ensure that the public health, welfare, and safety is protected beyond that which is proposed by the permit. I also offer the observation that the 15,000 limit was simply selected based on the old permit so that we are entitled to adopt a permit that is more protective of the public health than is proposed."*

At no time does either the Chair or any other member of the Board point to evidence in the record that leaving the mass emission limit at 15,000 tons will cause a water quality or public health consequence that reducing it to 13,995 tons will avoid[6].

In its response to the petition, the Regional Board submitted a justification for the decision that is slightly more specific:

> *There are many facts in the administrative record considered by the Regional Board in reaching its decision. These include, but are not limited to, the disparity between Petitioner's actual TSS emission rates and those proposed in their application, the ability of the PLMWTP [the Plant] to achieve much lower mass emissions than those proposed, the need to encourage water reclamation, the uncertainly of long-term impacts of the discharge, the lack of deep ocean monitoring, and the lack of monitoring for many human pathogens including viruses. [Response, page 9.]*

Most of those issues have already been discussed above. The issues involving reclamation and the lack of monitoring are certainly very legitimate concerns. However, the question must be repeated with regard to those issues: how does a reduction from 15,000 tons to 14,000 tons in the order, when the actual discharge cannot exceed 12,000 tons during the life of the permit, improve reclamation prospects or lessen the need for more monitoring?

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[6] There is little or no evidence in the record that the Regional Board considered reducing the mass emission limit for technology-based reasons, anti-degradation principles, the need to prevent nuisance conditions, or other statutory or regulatory bases.

III. CONCLUSION

For the reasons stated above, the State Board concludes that the Regional Board failed to make findings, either in its order or during its deliberations, that justify reducing the mass emission limits for TSS from 15,000 metric tons per year to 13,995 metric tons per year in the waste discharge requirements. The order should be amended.

4. <u>Commission Conclusion</u>. The information submitted by the City of San Diego, along with the supporting analysis and information from EPA, the RWQCB, and the SWRCB, taken together, support the City's request for a continued secondary treatment waiver.

EPA's independent Technical Evaluation determined that San Diego's discharges meet the applicable Clean Water Act standards for a waiver. Based on EPA's analysis including a review of plant performance and modeling efforts performed since 1995, the discharges from the outfall do not appear to be resulting in any significant reduction in light transmissivity, any biologically significant changes in benthic community structure in the vicinity of the outfall (beyond the zone of initial dilution), or any significant changes in fish populations or fish diseases in the area. The RWQCB staff's analysis further documents that the discharges would meet California Ocean Plan standards. Moreover, the stringent monitoring as required under Section 301(h) will be continued, and in fact improved, as EPA has indicated its intent to update the monitoring plan, and the RWQCB has instructed its staff to review (and prepare for future RWQCB adoption) modifications to the monitoring program, "including specific provisions for deep ocean receiving stations, human pathogens, and long term trends." In addition, the City has upgraded its facilities since the waiver was originally granted, including adding wastewater reclamation facilities and reducing total mass emission levels. As the SWRCB noted:

When the first Section 301(h) waiver was issued in 1995, the Regional Board set a discharge limit of 15,000 metric tons per year of TSS in its waste discharge requirements. At the time, the Plant was discharging a little less than 11,000 tons per year. Since then, the Plant has succeeded in reducing the amount of TSS discharged almost every year, despite considerable growth in its service area. In 1996, the discharge of TSS was 10,622 metric tons per year; in 1997, it was 10,183; in 1998, the number was 10,469; in 1999, the discharge was down to 9,188; and in 2000, the Plant only discharged 8,888 metric tons of TSS. That represents a 16 percent reduction over five years.

The SWRCB also noted:

As the City has projected the actual flow for the Plant in the year 2006 to be only 195 MGD, continued operation at the current rate of efficiency ought to result in a discharge of slightly more than 11,000 tons in that year.

In ordering the NPDES permit to be returned to the original 15,000 MT/yr. limit, the SWRCB concluded (Exhibit 13) that the RWQCB had "… failed to make findings, either in its order or during its deliberations, that justify reducing the mass emission limits for TSS from 15,000 metric tons per year to 13,995 metric tons per year in the waste discharge requirements."

In conclusion, based on the available monitoring evidence of the lack of adverse effects of past discharges on the marine environment at current and projected levels (for the life of the NPDES permit) discharge levels), with the continuation of the stringent monitoring throughout the term of the permit, as conditioned by the RWQCB and with the additional RWQCB assurances for water reclamation and monitoring improvements, and as modified and ordered by the SWRCB, the Commission finds that the City's discharges would be consistent with the water quality and marine resources policies (Sections 30230 and 30231) of the Coastal Act.

B. <u>Commercial Fishing/Recreation</u>

Section 30230 of the Coastal Act, quoted in full on page 14, includes a requirement that:

> *Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

The Coastal Act also contains more specific policies protecting commercial and recreational fishing; Section 30234 provides:

> *Facilities serving the commercial fishing and recreational boating industries shall be protected and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided. Proposed recreational boating facilities shall, where feasible, be designed and located in such a fashion as not to interfere with the needs of the commercial fishing industry.*

Section 30234.5 provides:

> *The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.*

The Coastal Act also protects public recreation (such as surfing and other water-contact recreation). Section 30213 provides, in part:

> *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided..*

Section 30220 provides:

> *Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.*

For similar reasons as discussed in the water quality/marine resource section above, the City's monitoring efforts over the past five years are sufficient to enable a determination that commercial/recreational fishing and other recreational concerns are met. Most recreational activities are centered around the Point Loma kelp beds and in nearshore waters. SCUBA diving is very popular in the offshore kelp beds. Only limited diving occurs outside the area of the kelp beds. EPA's analysis of the City's plume modeling and monitoring data show that while there have been shoreline and kelp bed water quality standard exceedances, they are unlikely to be related to the City's outfall discharges (Exhibits 3-4). EPA states:

> *There are numerous exceedances of the single sample thresholds for Total Coliform, Fecal coliform and enterococcus (Fig. 53 [Exhibit 3]). However, these do not appear to be related to the Point Loma outfall. A high percentage of these are related to storm events. There also seems to be a spatial pattern which suggests a southern source. For perspective, these data can be compared to comparable data collected as part of the IWTP shoreline monitoring program (See Fig. 54 [Exhibit 3]). There is some overlap between the two program (i.e., San Diego's Stations D1 and D2 overlap with IWTP's Stations S8 and S9). There is a clear south-north gradient in the frequency of exceedances with a peak at the Tijuana River for all three bacterial indicators.*
>
> *Exceedances are generally attributed to surface runoff (e.g. from the Tijuana River) rather than the outfall plume. This is supported by the lack of high concentrations in nearshore stations. This conclusion is also supported by modelling and monitoring efforts, which indicate that the outfall plume remains submerged in the offshore area.*
>
> *<u>Summary of bacteria data</u>. EPA's review of the bacterial monitoring data suggests that the outfall plume is trapped at depth offshore and that the plume surfaces infrequently. Elevated concentrations of bacteria in the kelp beds were observed on rare occasion (less than 0.5% of the time). Although bacterial concentrations along the shoreline frequently exceed the standards, there is no evidence to suggest that this is related to the outfall. Based on these data, along with the results of physical oceanographic modeling performed by the applicant in 1994, EPA concludes that the Point Loma modified discharge will meet the COP bacterial compliance standards at the shoreline, recreational areas and at kelp beds.*

Therefore, for the same reasons as discussed above with respect to marine resources, and with continued monitoring, the Commission concludes that the discharges would be consistent with

the applicable commercial and recreational fishing and general recreation policies (Sections 30230, 30234, 30234.5, 30213, and 30220) of the Coastal Act.

IX. SUBSTANTIVE FILE DOCUMENTS:

1. Consistency Certification No. CC-10-02 (City of San Diego, secondary treatment waiver).

2. Consistency Certification No. CC-62-91/Coastal Development Permit No. 6-91-217 (City of San Diego, Point Loma outfall extension).

3. No Effects Determination NE-94-95 (City of San Diego, secondary treatment waiver).

4. SWRCB Order WQO-2002-0013 (SWRCB/OCC FILE A-1477).

5. RWQCB Tentative Order No. R9-2002-0025 and draft NPDES Permit No. CA0107409, City of San Diego.

6. RWQCB Order No. 95-106 and NPDES Permit No. CA0107409, City of San Diego.

7. Consistency Certifications for secondary treatment waiver renewals, CC-88-92 and CC-123-98 (City of Morro Bay), CC-13-02 and CC-126-96 (Goleta Sanitary District), and CC-3-98 (County Sanitation Districts of Orange County (CSDOC)).

8. Consistency Determination No. CD-137-96 (IBWC) International Boundary and Water Commission International Wastewater Treatment Plant Interim Operation.

X. EXHIBITS (Attached)

1. Location Map
2. February 8, 2002, letter concerning reclamation capacity
3. Water quality exceedances charts
4. EPA Technical Evaluation
5. California Ocean Plan excerpts
6. April 10, 2002, CCC letter to City
7. April 16, 2002, RWQCB Order No. R9-2002-0025
8. April 17, 2002, City letter to CCC
9. August 16, 2002, City cover letter clarification of resubmitted consistency certification
10. April 9, 2002, SWRCB memo concerning CCC jurisdiction
11. April 16, 2002, California Resources Agency letter concerning CCC jurisdiction
12. April 30, 2002, CCC legal memo to CCC concerning CCC jurisdiction
13. SWRCB August 15, 2002, SWRCB Order No. WQO 2002-0013